

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**UNITED STATES OF AMERICA,**

**Plaintiff(s),**

**v.**

**TAN DUC NGYUEN,**

**Defendant(s).**

**CASE NO. SACR 08-251 DOC**

**ORDER GRANTING MOTION  
FOR BILL OF PARTICULARS;  
DENYING MOTION TO SUPPRESS**

Before the Court are two motions brought by Defendant Tan Duc Nguyen (“Defendant” or “Nguyen”): (1) a Motion for Bill of Particulars (Dkt. 36); and (2) a Motion to Suppress (Dkt. 42). After considering the moving, opposing, and replying papers, as well as the parties’ oral argument, the Court GRANTS the Motion for Bill of Particulars and DENIES the Motion to Dismiss.

**I. Background**

On October 1, 2008, Nguyen was indicted to a single count of tampering with a witness, victim, or an informant under 18 U.S.C. § 1512(b)(3), which *inter alia* prohibits:

1 “misleading conduct toward another person, with intent to . . . hinder, delay, or prevent the  
2 communication to a law enforcement officer or judge of the United States of information relating  
3 to the commission or possible commission of a Federal offense or a violation of conditions of  
4 probation[,] supervised release, or parole, or release pending judicial proceedings.” In relevant  
5 part, Nguyen is charged with misleading a California state investigator with the intent to obstruct  
6 the discovery and transfer of information to federal investigators.

7           Nguyen is a one-time Republican Party candidate who unsuccessfully ran for  
8 Congress in 2006 against incumbent Congresswoman Loretta Sanchez in California’s 47th  
9 Congressional district. The instant charges arise out of a letter mailed to Hispanic-surnamed  
10 registered voters in the 47th Congressional District in the State of California prior to the Fall  
11 2006 Congressional elections. *See* Dkt. 1. The letter was apparently signed by an individual  
12 named Sergio Ramirez with a header indicating that its origin was an organization named the  
13 California Coalition for Immigration Reform. *See* Exhibit D to Motion to Dismiss. California  
14 state investigators discovered and translated the Spanish language letter, which purportedly  
15 informs registered voters that:

16           This letter is been [sic] sent to you, because you were registered to  
17 vote recently. If you are a citizen of the United States, you are  
18 kindly asked to participate in the democratic process of voting.

19           You are also being informed that if you are in ths country illegally or  
20 if you are a legal resident, voting in a federal election is a crime,  
21 which may result in incarceration, and you will indeed be deported  
22 for voting, when you do not have the right to do so.

23           Also, you are being informed that the government of the United  
24 States is implementing a new computer system, with which to verify  
25 the names of all the new registered parties who vote in the coming  
26 elections of October and November. Organization [sic] who are  
27 against immigration, might request information from this new  
28 computer system.

1 Unlike Mexico, there is no incentive for voting in this country.

2 There is no voting registration card in the United States. Therefore,  
3 it is useless and dangerous to vote, in any election, if you are not a  
4 citizen of the United States.

5 Do not mind any politician that tells you otherwise. Said politicians  
6 are only looking after their best interest. They only want to win the  
7 elections, with total disregard to what might happen to you.

8 *See id.*

9 October 25, 2006, Special Agent Shannon Williams with the Attorney General's  
10 Office for the state of California obtained a search warrant for Nguyen's two home addresses  
11 and campaign headquarters. *See* Exhibit A to Motion to Dismiss. Special Agent Williams'  
12 affidavit in support of her application for a search warrant stated that she was first alerted to the  
13 letters by several concerned voters on or about October 17, 2006. In response to voters'  
14 complaints and, out of concern that the sending of the letters could constitute a violation of  
15 California Election Code sections 18540 (use of threats to influence voting), 18502 (interference  
16 with an election), and 18543 (challenging a person's right to vote). Special Agent Williams  
17 proceeded to interview the chairperson and CEO of the California Coalition for Immigration  
18 Reform, the organization identified on the letters' letterhead and return mailing address, who  
19 denied knowledge of the letters and noted that the letterhead used by the letters was similar, but  
20 distinct, from letterhead used by her organization.

21 Special Agent Williams spoke with the operator of a mass mailing service based in  
22 Huntington Beach, CA, who acknowledged mailing the letters for a fee and directed her to  
23 Defendant. Special Agent Williams and another state investigator also spoke with an employee  
24 at a company that compiles lists of registered voters and the employee recounted Nguyen's  
25 interest in a list of registered Democrats and newly registered voters with Hispanic surnames  
26 who were located in the 47th Congressional District.

27 On October 19, 2006, Special Agent Williams interviewed Nguyen with Nguyen's  
28 attorney present. The audio recording of the interview is incomplete due to a technical

malfunction. In essence, Nguyen disclaimed direct responsibility for the dissemination of the letters but acknowledged prior knowledge of their existence. Nguyen informed Special Agent Williams that two individuals – one of whom was contributor to his campaign and another was a close friend – has likely mailed the letters without receiving the campaign’s sanction. According to Special Agent Williams’ affidavit, Nguyen acknowledged assisting in the dissemination of the letters (by arranging for their mailing with a mass mail service) but claimed that he never knew the actual contents of the letters he was helping to disseminate. In her affidavit, Special Agent Williams further notes that Nguyen’s description of his prior exchange with the contributor to his campaign was “selective and incomplete” and “do[es] not make sense in context.” The affidavit concludes by documenting Williams’ belief that “there existed a conspiracy or agreement between [Nguyen], [his close friend], and perhaps other [sic] to draft, produce and mail out letters to the targeted Orange County voters to benefit [Nguyen’s] Congressional campaign by discouraging a discreet and perceived vulnerable set of potential voters who would be expected to favor his Democratic opponent.” In support of her belief, Special Agent Williams referenced an electronic mail exchange in which Nguyen submitted input as to the content of the letter in question.

The search of Nguyen’s campaign headquarters and residences was conducted to find indicia of any involvement in the letters’ dissemination. After the search, two more warrants were issued on October 25, 2006, to search computers seized in the first search, and January 25, 2007 to search for e-mails from the computers. *See* Exhibits B&C to Motion to Suppress. To this Court’s knowledge, Nguyen has not since been charged with any federal or state offense related to the mailing of the letters.

## **B. Discussion**

### **1. Motion for Bill of Particulars**

The indictment charges Nguyen with a violation of 18 U.S.C. § 1512(b)(3) on the basis that Nguyen “knowingly misled State of California investigators with the intent to hinder, delay, and prevent the communication to federal law enforcement officers of information relating to whether a letter mailed to Hispanic-surnamed registered voters in the 47th

1 Congressional District of the State of California regarding the November 2006 federal election  
2 violated federal election laws, including interfering with the federally protected right to vote in  
3 federal elections . . .” *See* Dkt. 1.

4 By his Motion for Bill of Particulars, Defendant seeks the identification of: (1) all  
5 state investigators Nguyen allegedly misled; (2) the time and content of all acts and statements  
6 made by Nguyen with the alleged intent to mislead state investigators and/or obstruct the  
7 communication of information to federal officers; (3) the federal nexus between Nguyen’s  
8 alleged conduct and the state run investigation and specifically, any action taken by Nguyen that  
9 could constitute “obstruction of justice.”

10 Under Rule 7(f) of the Federal Rules of Criminal Procedure, a district court may,  
11 in its discretion, order the government to provide a defendant with a bill of particulars. *See* Fed.  
12 R. Crim. P. 7(f). “A motion for a bill of particulars is appropriate where a defendant requires  
13 clarification in order to prepare a defense” and “[i]t is designed to apprise the defendant of the  
14 specific charges being presented to minimize the danger of surprise at trial, to aid in preparation  
15 and to protect against double jeopardy.” *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir.  
16 1983). “In determining if a bill of particulars should be ordered in a specific case, a court should  
17 consider whether the defendant has been advised adequately of the charges through the  
18 indictment and all other disclosures made by the government.” *Id.*

19 The one and half page indictment that contains nothing but conclusory statements  
20 about Nguyen’s alleged acts and intent does not inform Nguyen of the manner in which he  
21 misled state investigators about his role (if any) in the dissemination of the letters. Nor does it  
22 inform Nguyen of the manner in which his alleged acts were intended to mislead investigators as  
23 to the legality of the letters in question. In fact, the indictment does not even provide adequate  
24 information about how Nguyen’s misrepresentations obstructed, or attempted to obstruct, the  
25 flow of information between state investigators and federal investigators. The Court nonetheless  
26 recognizes that a bill of particulars forces the government to fix a target against which Nguyen  
27 can focus his defense. Notwithstanding the curious decision to not charge Nguyen with the  
28 actual mailing of the letters in question, the Court recognizes that in obstruction of justice cases,

1 the Defendant very often possesses greater knowledge about the relevant facts than the  
2 government. Thus, a bill of particulars may not only be premature and burdensome, but may be  
3 unnecessary in light of the fact that Defendant is well aware of the content of any statements he  
4 made to state investigators.

5 The government has argued that discovery subsequent to the indictment has put  
6 Defendant on adequate notice of the charges against him. The Court has not had a chance to  
7 review all the discovery, but based on the limited exhibits attached to the briefing on this issue,  
8 maintains its concern that Defendant's right to prepare an adequate defense remains unrequited.  
9 While the government need not senselessly narrow its allegations or take positions it is uncertain  
10 of, the government should, at least, identify the acts in question and link them to the statute  
11 Defendant is alleged to have violated. Accordingly, Defendant's Motion for a Bill of Particulars  
12 is GRANTED with respect to all three categories. The government shall submit a Bill of  
13 Particulars in compliance with requests identified by Defendant's Motion within twenty one (21)  
14 days of this order.

## 15 **2. Motion to Suppress**

16 By his Motion to Suppress, Defendant requests the suppression of all items seized,  
17 and the "fruit" therefrom, of search warrants issued for Defendant's home and campaign  
18 headquarters on or about October 19, 2006. In essence, the Motion to Suppress encompasses  
19 evidence seized as a result of the initial search warrant, as well as evidence obtained from the  
20 subsequent search warrants to search Nguyen's computers and the e-mail accounts located on  
21 those computers.

22 Defendant argues the underlying letter sent to registered voters with Hispanic  
23 surnames was not illegal and, in any event, constituted protected political speech under the First  
24 Amendment. *See* Motion to Suppress at 5-7. Thus, according to Defendant, the warrant could  
25 not have demonstrated probable cause because there was not a "fair probability that contraband  
26 or evidence of a crime" would be found in Nguyen's home or campaign headquarters. *See id.* at  
27 7 (citing *United States v. Rodriguez*, 860 F.2d 479, 484 (9th Cir. 1989)). According to  
28 Defendant the letter "simply stated a legal truth, that it is illegal to vote if you are not legally

1 registered.” *See* Motion to Suppress at 8:16-17.

2 “A magistrate judge’s finding of probable cause is entitled to great deference.”  
3 *United States v. Clark*, 31 F.3d 831, 834 (9th Cir. 1994). The affidavit in this case recounted a  
4 number of interviews, including an interview of the Defendant, attached as exhibits the letter in  
5 question as well an e-mail conversation in which Defendant acknowledged knowledge of the  
6 letters prior to their dissemination. Thus, there is little question that, if sending the letters was  
7 potentially illegal, there was sufficient probable cause to support a search warrant for  
8 Defendant’s home and campaign headquarters. *See United States v. Crews*, 502 F.3d 1130, 1136  
9 (9th Cir. 2007) (“For probable cause, an affidavit must establish a reasonable nexus between the  
10 crime or evidence and the location to be searched.”); *see also United States v. Pitts*, 6 F.3d 1366,  
11 1369 (9th Cir. 2007). The only remaining question is whether there was no basis for a  
12 magistrate judge to conclude that the letter, in fact, violated California Election Code sections  
13 18540, 18502, and/or 18543. The Court need not reach the issue of the letter’s legality, but it  
14 admonishes Defendant for his statement that the letter “begins with the clear and indisputable  
15 message that U.S. citizens, *whether immigrants, emigrants, or any other type*” may vote. *See*  
16 Motion to Suppress at 6:5-7 (emphasis added). The letter includes no such flourish.

17 Having reviewed the California statutes and the translation of the letter in question  
18 (including Defendant’s alternate translation), the Court finds that adequate probable cause  
19 supported the issuance of the search warrant. In any event, the physical evidence obtained from  
20 Special Agent Williams’ search of Nguyen’s residence and campaign headquarters, as well as  
21 subsequent searches of Nguyen’s computers and e-mail accounts, are admissible pursuant to  
22 *United States v. Leon*, 468 U.S. 897, 913, 104 S.Ct. 3405 (1984) (holding that physical evidence  
23 seized pursuant to a lawful warrant that is later determined to lack probable cause is nonetheless  
24 admissible where the officers reasonably rely on the warrant). Having reviewed the facts and in  
25 light of counsels’ arguments at the hearing on this matter, the Court disagrees with Defendant  
26 that the warrant was “so clearly lacking in probable cause that no well-trained officer could have  
27 thought that a warrant should issue.” *See* Motion to Suppress at 8-9 (citing *Leon*, 468 U.S. at  
28 923).

1 Accordingly, the Motion to Suppress is DENIED.

2 **C. Disposition**

3 At the hearing on this matter, counsel for the government conceded that a  
4 significant portion of the audio recording of Special Agent Williams' interview of Defendant on  
5 October 19, 2006 is missing due to a technical malfunction. The Court is concerned with the  
6 unavailability of evidence important to the consideration and resolution of an 18 U.S.C.  
7 § 1512(b)(3) prosecution. Given the already sparse indictment, it is only reasonable that the  
8 government, having had months to prepare its case, apprise Defendant of the nature of the  
9 charges against him, so that he may prepare his case. Accordingly, the Motion for Bill of  
10 Particulars is GRANTED.

11 Adequate probable cause supported the issuance of the three search warrants that  
12 encompassed Nguyen's home, campaign headquarters, computers, and electronic mail accounts.  
13 Furthermore, law enforcement acted in good-faith reliance on the existence of probable cause  
14 when effectuating those search warrants. Accordingly, the Motion to Dismiss is DENIED.

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18 IT IS SO ORDERED.

19 DATED: January 25, 2010

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22 DAVID O. CARTER  
23 United States District Judge  
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